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State of Maryland BOARD OF PUBLIC WORKS ADVISORY

www.bpw.state.md.us

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Revision Date: August 31, 2005

Original Date: December 1, 2003

Subject: Suspension and Debarment

Effective Date: Immediate

Purpose: To set forth the grounds for debarment and encourage procurement agencies to provide relevant information to the Office of the Attorney General.

Background: State suspension and debarment procedures are intended to protect the integrity of the procurement process and ensure that the State contracts with qualified and responsible participants (COMAR 21.08.01.01). The Office of the Attorney General, Antitrust Division, initiates the formal proceedings by filing a complaint. The Board of Public Works determines whether suspension or debarment is appropriate and the time period of the debarment. Depending on the basis for debarment, the Board may debar a person or business from doing business with the State or with a public body which includes local government entities (COMAR 21.08.01 and .03).

Grounds for Debarment: Every State agency is responsible for monitoring solicitations, contracts, and contractors and reporting to the Office of the Attorney General any behavior or circumstances that may be a basis for debarment. Agencies aware of any of the following should report the information to the Office of the Attorney General for investigation. Agencies must be diligent because there is a five-year statute of limitations for instituting debarment proceedings in the State. Causes for debarment include the following:

- Conviction of a criminal offense in Maryland, another state, or the United States (includes probation before judgment).
- Admission of, in writing or under oath, an act or omission that constitutes grounds for conviction or liability under any law or statute described in COMAR 21.08.03.03(A).
- Operating in a manner designed to evade the application of or defeat the purpose of COMAR 21.08.

- If the person is a successor, assignee, subsidiary, or affiliate of a person who is debarred or suspended.
- Failure to perform or performing unsatisfactorily one or more contracts within the past five years unless caused by acts beyond the control of the person if the Board believes it to be serious enough to justify debarment.
- Failing to file debarment information on the Bid/Proposal Affidavit as required, or filing an untruthful affidavit.
- Debarment from federal contracts under the Federal Acquisition Regulations (effective October 1, 2005).
- Any other cause the Board determines to be so serious as to affect the integrity of the procurement process.

The Bid/Proposal Affidavit prescribed in COMAR 21.05.08.07 includes a section where bidders and offerors are required to disclose whether they, or any affiliated companies or subcontractors, have been suspended or debarred. Agencies may also want to consider requiring disclosure of any regulatory sanctions that did not result in criminal charges.

Each agency should check the name of the apparent awardee against the State suspension and debarment list (see the Board's Web site at www.bpw.state.md.us) and the federal government suspension and debarment list (*Excluded Party List System* at epls.arnet.gov.) before making a recommendation for award. Of course, bidders appearing on the State list may not be awarded contracts. A bidder who appears on the federal list is not automatically barred from State contracts but that federal (or other jurisdiction) debarment must be factored into the contractor responsibility determination. Additionally, the agency should be mindful that information that may be a basis for a debarment should be reported to the Office of the Attorney General for investigation.

The Maryland Department of Transportation decertifies Minority Business Enterprises that are debarred in Maryland.

Questions may be addressed to:

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